

REMARKS

This responds to the Final Office Action mailed on September 8, 2008.

Claims 1, 6, 8, 13, 15, 20, 25-26, and 31 are amended, claims 21, 29-30, and 35-38 are canceled, and claims 39-42 are added; as a result, claims 1-20, 22-28, 31-34 and 39-42 are now pending in this application.

§103 Rejection of the Claims

Claims 1, 4-5, 7-8, 11-12, 14-15, 18-19, 24-25, and 27-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaidyanathan et al. (U.S. Publication No. 2004/0059596; hereinafter “Vaidyanathan”) in view of Ojha et al. (U.S. 6,598,026; hereinafter “Ojha”).

Applicants respectfully submit that the rejection of claims 1-2, 4, 8-13, 15 and 19-23 is defective for the reason that the Final Office Action fails to make a *prima facie* showing of obviousness as is required under 35 U.S.C. § 103.

Applicable Law

In rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *See* M.P.E.P. §2142. Further, “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”¹

Argument

Applicants believe that the issue of patentability over Vaidyanathan in view of Ojha is best understood with regard to the limitations of now amended claim 1.

updating a record associated with the failed transaction that is not completed by the buyer, the updating the record including incrementing a first

¹ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). cited with approval in *KSR v Teleflex*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller; and

communicating a user interface to a seller, the user interface including a second count of failed transactions not completed by the buyer, the second count including the first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.

Vaidyanathan

Prior to amendment of claim 1 the Final Office Action inferred that Vaidyanathan taught updating a record associated with a failed transaction that is not completed by a party. The Final Office Action stated:

...Vaidyanathan “teaches storage of data on a meta-rating forum (a record) which relates to the participation of a party in the dispute resolution process (paragraph 11, lines 27-33). Vaidyanathan explicitly points out that the dispute is a dispute between a buyer and a seller in an online marketplace (paragraph 12).

Vaidyanathan discloses that the dispute may arise when a party is dissatisfied with the online transaction previously entered into (paragraph 56). Vaidyanathan also points out that a party may be dissatisfied because the buyer does not pay a valid bill (paragraph 6). If a buyer and seller have an agreement for a transaction, and the buyer rejects the valid bill for the transaction, Examiner considers this to be a “failed transaction that is not completed by a party.” If the buyer rejects the bill, the bill would not be paid, and the transaction would not be completed.

Therefore, since the data stored on the forum may be considered a record, and the record is associated with a dispute resolution process, and the dispute resolution process is due to a failed transaction not completed by the party, Vaidyanathan teaches updating a record associated with a failed transaction that is not completed by the party.

Applicants respectfully disagree. Applicants disagree for the reason that the above alleged disclosures of Vaidyanathan including 1) “the participation of a party in the dispute resolution process;” 2) “a dispute between a buyer and a seller in an online marketplace;” 3) “a party [who] may be dissatisfied because the buyer does not pay a valid bill;” and 4) “data being stored on a forum” does not constitute “*updating a record associated with the failed transaction that is not completed by the buyer,*” as required by claim 1. Indeed, without further evidence the Finally Office Action merely speculates

that such a record exists. For example, it may also be inferred that Vaidyanathan merely processes “a party [who] may be dissatisfied because the buyer does not pay a valid bill” but fails to “[*update*] a record associated with the failed transaction that is not completed by the buyer,” as required by claim 1. Nevertheless, claim 1, as amended, now requires the new feature “*communicating a user interface to a seller, the user interface including a second count of failed transactions not completed by the buyer, the second count including the first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.*” In contrast, Vaidyanathan fails to teach or suggest this limitation.

Further in regard to Vaidyanathan, the Office Action mailed February 6, 2008, in rejecting claim 1, stipulated that “Vaidyanathan fails to explicitly teach the updating of the record including incrementing a count of failed transactions not completed by the party”² and alleged that Ojha discloses this limitation.

Ojha

The Office Action mailed February 6, 2008 alleged that Ojha disclosed a “reputation metric”³ consisting of the number of offers honored less the number reneged ... and such a reneging would constitute a failed transaction not completed by the buyer.”⁴ In support of this contention the Office Action highlights the following:

According to a specific embodiment of the invention, even though the buyer's bids are non-binding, there is nevertheless a consequence for submitting frivolous bids. That is, the transaction site of the present invention may be configured to track a buyer's "reputation" by tracking the buyer's transaction behavior. For example, the number of bids submitted by a particular buyer could be related to the number of bids honored or reneged upon by that buyer, and an objective value could be generated therefrom indicative of the buyer's "reputation." According to a specific embodiment, the metric is simply the number of offers honored less the number reneged, a large positive value representing a "good" reputation and a large negative value representing a "bad" one.⁵

² Office Action mailed 02/06/2008, page 4.

³ *Id.*

⁴ *Id.*

⁵ Ojha, col. 3, lines 22-43.

The above quote from Ojha relates a value that is indicative of a “buyers ‘reputation’.” The value is based on “*non-binding*” or “frivolous bids.”

Amended claim 1 now requires “*updating a record associated with the failed transaction that is not completed by the buyer, the updating the record including incrementing a first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.*” Further, amended claim 1 now requires the new feature of “*communicating a user interface to a seller, the user interface including a second count of failed transactions not completed by the buyer, the second count including the first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.*” In contrast, the above from Ojha relates a value indicative of a buyer’s reputation that is based on *non-binding* or frivolous bids. In view of the amendments to claim 1, a non-binding bid could hardly be said to be suggestive of “*a first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller*” because a non-binding bid carries no obligation to “*send a payment to the seller.*” Indeed, a non-binding bid is an offer and an offer, in and of itself, does not require a buyer to “*send a payment to the seller.*” Moreover, nowhere does Ojha disclose “*communicating a user interface to a seller, the user interface including a second count of failed transactions not completed by the buyer, the second count including the first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.*” as now required by amended claim 1.

The above remarks are also applicable to independent claims 8, 15, and 28.

In addition, if an independent claim is nonobvious under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious and rejection of claims 4-5, 7, 11-12, 14, 18-19, 24-25, and 27 under 35 U.S.C. § 103 is also addressed by the above remarks.

In summary, a person having ordinary skill in the art, having carefully considered Vaidyanathan and Ojha, whether alone or in combination, would not conclude the limitations of independent claims 1, 8, 15 and 28 are obvious as is required to support a *prime facie* case of obviousness in rejecting of the independent claims of the present application under 35 U.S.C. § 103.

ebay

Claims 2-3, 6, 9-10, 13, 16-17, 20, 22-23, 26, and 29-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaidyanathan and Ojha, and further in view of eBay's Website (www.ebay.com) on October 14 1999, as viewed on the Wayback Machine (www.archive.org), hereinafter "eBay".

Applicants respectfully submit that the rejection of claims 2-3, 6, 9-10, 13, 16-17, 20, 22-23, 26, and 29-38 is defective for the reason that the Final Office Action fails to make a *prima facie* showing of obviousness as is required under 35 U.S.C. § 103.

Claims 2-3 and 6 depend on independent claim 1. Claims 9-10 and 13 depend on independent claims 8. Claims 16-17, 20, 22-23 and 26 depend on independent claim 15 and claim 31-34 depend on independent claim 1. If an independent claim is not anticipated under 35 U.S.C. § 103 then, any claim depending therefrom is nonobvious. Specifically, the rejection of claims 2-3, 6, 9-10, 13, 16-17, 20, 22-23, 26, and 29-38 under 35 U.S.C. § 103 is also addressed by the above remarks because the eBay reference does not supply the elements of the independent claims 1, 8, 15, and 28 that were shown above to be missing from Vaidyanathan and Ojha as set forth below.

eBay relates to a non-paying bidder policy and includes the following user interfaces:

eBay: Safe Harbor

Preview the [NEW CATEGORIES](#) and tell us what you think
Put your pictures online with [Kodak PhotoNet](#) online.
Shop smarter! Now you can search in the [Gallery!](#)

[Help](#)
☐ Search titles and descriptions

Non-Paying Bidder Policy

Non-paying bidding is defined as winning an auction but not following through with the transaction (payment). It deteriorates trust within our trading community. The User Agreement puts it like this: "If you bid on an item and your bid is accepted by the seller, you are obligated to complete the transaction." There are exceptions such as if the item is covered by our [Non-Binding Bid](#) policy (such as Real Estate). As a mechanism to insure a positive online trading experience for all eBay members, eBay enforces a Non-Paying Bidder Policy.

This policy works in conjunction with the Final Value Fee credit system. When a seller requests a credit for a sale that was not completed due to non-payment by the bidder, the bidder faces automatic consequences for not completing the transaction.

Bidders reported for non-payment via our automated online credit request system face the following warnings and suspensions:

1. First offense; warning
2. Second offense; warning
3. Third offense; warning and 30 day suspension
4. Fourth offense; indefinite suspension

Click [here](#) for Frequently Asked Questions.

[Announcements](#) | [Register](#) | [eBay Store](#) | [Safe Harbor](#) | [Feedback Forum](#) | [About eBay](#)
[Home](#) | [My eBay](#) | [Site Map](#)

[Browse](#) | [Sell](#) | [Services](#) | [Search](#) | [Help](#) | [Community](#)
[Overview](#) | [Basics](#) | [Buyer Guide](#) | [Seller Guide](#) | [My Info](#) | [Community](#)

Copyright © 1995-1999 eBay Inc. All Rights Reserved.
Designated trademarks and brands are the property of their respective owners.
Use of this Web site constitutes acceptance of the [eBay User Agreement](#) and [Privacy Policy](#).

26

<http://web.archive.org/web/1999/02/23/5501/pages.ebay.com/services/safeharborsafeharbor.nph.html> (1 of 2) 10/2000 1:28:11 PM

eBay Help: Basics | FAQ | Non-Paying Bidder Program

A. Sometimes there are extenuating circumstances that compel a bidder to back out of their obligation--- you become ill, there's a death in the family, or you have computer problems, etc. Because of this, members are allowed three warnings before an indefinite suspension.

[Question Index](#)

Q. What if I get a warning for this offense, but I did pay for that item?

A. If you receive notification from eBay that you had not completed the auction, but you actually did, go to [How to Appeal a Non-Paying Bidder Warning](#) under Bidding in Help's Community Standard page. Fill out the appropriate form and eBay will attempt to resolve the issue as soon as possible.

[Question Index](#)

Q. Who knows that I received a warning?

A. Only you and eBay are aware of your warning.

[Question Index](#)

Q. How do I report a non-paying bidder?

A. When you request a final value fee credit, the non-paying bidder is automatically identified by the system. If certain criteria are met, the system automatically generates a warning letter to the bidder.

[Question Index](#)

[Announcements](#) | [Register](#) | [eBay Store](#) | [Safe Harbor](#) | [Feedback Forum](#) | [About eBay](#)
[Home](#) | [My eBay](#) | [Site Map](#)

[Browse](#) | [Sell](#) | [Services](#) | [Search](#) | [Help](#) | [Community](#)
[Overview](#) | [Basics](#) | [Buyer Guide](#) | [Seller Guide](#) | [My Info](#) | [Community](#)

Copyright © 1995-1999 eBay Inc. All Rights Reserved.
Designated trademarks and brands are the property of their respective owners.
Use of this Web site constitutes acceptance of the [eBay User Agreement](#) and [Privacy Policy](#).

27

<http://web.archive.org/web/1999/01/20/4951/pages.ebay.com/help/basics/safeharbor.nph.html> (2 of 2) 10/2000 2:16:24 PM

The user interface on the left relates to a non-paying bidder policy and the interface on the right relates to questions and answers about the policy. The user interface on the left states, "Non-paying bidding is defined as winning an auction but not following through with the transaction (payment)." In addition, the user interface on the left further states, "Bidders reported for non-payment via our automated online credit request system" face warnings and suspensions including a first, second, and third warning followed by a suspension. The user interface on the right answers questions including the question "Q. Who knows that I received a warning?" The answer provided for this question is "Only you and eBay are aware of the warning."

Amended claim 1 now requires "*communicating a user interface to a seller, the user interface including a second count of failed transactions not completed by the buyer, the second count including the first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.*" In contrast, the above from eBay relates warnings sent to and suspensions of a non-paying bidder, only the non-paying bidder and eBay

being aware of the warning. Accordingly, eBay cannot be said to teach or suggest the above quoted new feature in amended claim 1.

Moreover, eBay may be said to teach away from the limitations of now amended claim 1. eBay may be said to teach away from the limitations of now amended claim 1 by including the word “Only” in the answer “Only you and eBay are aware of the warning.” Specifically, eBay implicitly discourages the solution in claim 1 by emphasizing the confidential nature of the warning. In contrast, amended claim 1 requires “*communicating [the] user interface to [the] seller, the user interface including a second count of failed transactions not completed by the buyer,*” which Applicants submit is a solution that is explicitly discouraged by eBay.

In summary, Vaidyanathan and Ojha, and eBay, whether alone or in combination, cannot be said to support a rejection the independent claims as obvious under 35 U.S.C. § 103 because the rejection is defective for failing to make a prima facie showing of obviousness.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at (408) 278-4046 to facilitate prosecution of this application.

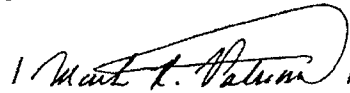
If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(408) 278-4046

Date November 10, 2008

By



Mark R. Vatuone
Reg. No. 53,719

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 10, 2008.

CHRIS BARTV
Name

CRW
Signature